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NOV 21 2005

In re Application of: : DECISION ON PETITION
SCHNEIDER *et al.* : TO WITHDRAW HOLDING
Serial No.: 09/680,726 : OF ABANDONMENT
Filed: October 10, 2000 :
Attorney Docket No.: **10004229-1** :

This is a decision on the petition filed March 21, 2005, to withdraw the holding of abandonment in the above-identified application under 37 C.F.R. § 1.181. No fee is required.

The petition is **GRANTED**.

The application was held abandoned for failure to timely file a response to the Office action mailed on July 13, 2004. A Notice of Abandonment was mailed on February 24, 2005.

Petitioner asserts that on November 08, 2004, a response, including a request for a one-month extension of time, and an amendment, was timely filed in the above-identified application. To support this assertion, petitioner has submitted a copy of a 9 page response bearing a certificate under 37 CFR 1.8(a) showing a date of transmission of November 08, 2004, a copy of an "Auto-Reply Facsimile Transmission" report from the USPTO which acknowledges satisfactory facsimile transmission of 9 pages on November 08, 2004, and a statement from Pamela Lau kee, to the previous timely transmission of the response to the USPTO.

A review of the application file record reveals that the above-identified response is not of record in the application file and cannot be located. However, 37 CFR § 1.8(b) provides for accepting a correspondence as being timely filed if it was mailed or transmitted in accordance with 37 CFR § 1.8(a), and is reproduced below:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence: (1) informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware

that the Office has no evidence of receipt of the correspondence; (2) supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and (3) includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition, meets the conditions of 37 CFR 1.8(b) to establish the previous timely filing of the response. Accordingly, the petition is **granted**.

For the above stated reason, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

The copy of the response submitted on March 21, 2005, is accepted since the response originally submitted was apparently lost.

The application file is being forwarded to the Technology Center 2800 support staff for entry of the response. From there, the application will be forwarded to the examiner for further examination.

Inquiries regarding this decision should be directed to Clayton E. LaBalle at (571) 272-1594.



Sharon A. Gibson, Director
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